

BOARD OF APPEALS CASE NO. 4942

*

BEFORE THE

APPLICANT: Forest Hill Industrial Airpark

*

ZONING HEARING EXAMINER

**REQUEST: Variance to disturb the 75
foot Natural Resource District buffer in
the GI District; 2211-2219 Commerce Road,
Forest Hill**

*

OF HARFORD COUNTY

*

Hearing Advertised

*

Aegis: 7/14/99 & 7/21/99

HEARING DATE: August 25, 1999

*

Record: 7/16/99 & 7/23/99

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicant is Forest Hill Industrial Airpark, Inc. The Applicant is requesting a variance to Section 267-41(D)(5)(e) and (6) of the Harford County Code, to disturb the 75 foot Natural Resource District buffer.

The subject parcel is owned by J. Robert and Mary Martin, and is located at 2211-2219 Commerce Road in the Third Election District. The parcel is identified as Parcel No. 52, in Grid 1-F, on Tax Map 40. The lots involved are O-4, P-4, Q-4 and S-4 in the Forest Hill Industrial Airpark. The parcel contains 7.67 acres, more or less, and is zoned General Industrial.

Mr. Robert Wilson appeared and qualified as an expert in the field of site development and planning. Mr. Wilson introduced as "Petitioner's Exhibit No. 1". a plat setting forth the 25 foot buffer to non-tidal wetlands, which is required by Maryland State Law. The plat also sets forth the 75 foot non-tidal wetlands buffer, which is regulated by the Natural Resource District provisions of the Harford County Zoning Code, and set forth the area to be disturbed and the area to be re-vegetated.

Mr. Stan Keller of Keller Environmental Associates, appeared and qualified as an expert in the field of environmental analysis. Mr. Keller testified that he has visited the site, and that he prepared a wetland delineation plan. Mr. Keller said that if the variance is approved, the Applicant will replant 570 trees and shrubs in the wetland. Mr. Keller went on to explain that it was his opinion that approval of the requested variance to disturb the buffer will not adversely effect the wetland and will improve the quality of the existing wetland.

Case No. 4942 - Forest Hill Industrial Airpark, Inc.

Mr. Anthony S. McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified that the Department has reviewed the proposed disturbance and mitigation and find the proposal acceptable. He said the location of an existing sewer interceptor within the buffer has already affected the area. He said the extensive planting proposed by the Applicant should provide a valuable environmental improvement by stabilizing soils, diversifying natural habitat, and removing excess nutrients and pollutants. Mr. McClune said that the Zoning Administrator has requested comments from the Soil Conservation Service and the Maryland Department of the Environment with respect to the Applicant's request. Mr. McClune said that no comments were received from either agency and, therefore, he must conclude that they are not opposed to the Applicant's request.

No protestants appeared in opposition to the Applicant's request.

CONCLUSION:

The Applicant is requesting a variance to Section 267-41(D)(5)(e) and (6) to disturb the 75 foot Natural Resource District buffer in the General Industrial District.

Section 267-41(D)(5)(e) provides:

"Non-tidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands."

Section 267-41(D)(6) allows the Board to grant variances and provides:

"Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources."

The uncontradicted testimony of the Applicant's two expert witnesses, as well as that of Mr. McClune of the Department of Planning and Zoning, was that the proposed disturbance of the buffer will not adversely effect the Natural Resource District. The witnesses actually felt that the additional plantings proposed by the Applicant would provide a valuable environmental improvement by stabilizing soils, diversifying the natural habitat and removing excess nutrients and pollutants.

Case No. 4942 - Forest Hill Industrial Airpark, Inc.

No comments were received from the Soil Conservation Service or the Maryland Department of the Environment with respect to the Applicant's request, although comments were requested. Therefore, the Hearing Examiner must conclude that neither the Soil Conservation Service nor the Maryland Department of the Environment wished to comment on the Applicant's request.

It is the finding of the Hearing Examiner that approval of the requested variance will not adversely effect the Natural Resource District and that the Applicant's proposal to re-vegetate the area with an addition of 570 trees and shrubs should enhance the area.

It is the recommendation of the Hearing Examiner that the requested variance be approved, subject to the following conditions:

1. That the final mitigation plan shall conform substantially to the plan submitted by the Applicant. Minor modifications shall be permitted to address availability of plant materials and other factors.
2. That the Applicant shall not encroach into the State's 25 foot buffer for non-tidal wetlands.
3. That the final mitigation plan shall be approved by the Department of Planning and Zoning and a financial security submitted to Harford County in an amount sufficient to cover the estimated cost for the mitigation planting prior to issuance of a grading permit for any disturbance of the Natural Resource District.
4. That the mitigation plan and security shall include the entire Natural Resource District which is the subject of this case and shall not be broken into smaller phases.
5. That the mitigation plantings shall be installed during the first planting season following the grading and shall be monitored for survival for a three-year period.

Date SEPTEMBER 21, 1999



L. A. Hinderhofer
Zoning Hearing Examiner